

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24**

SERVICIOS MEDICOS UNIVERSITARIOS,  
INC. D/B/A HOSPITAL DE LA  
UNIVERSIDAD DE PUERTO RICO<sup>1</sup>

Employer

Case 24-RC-8416

and

UNIDAD LABORAL DE ENFERMERAS  
(OS) Y EMPLEADOS DE LA SALUD

Petitioner

**DECISION AND ORDER**

Upon a Petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists, and if so, to determine an appropriate unit for collective bargaining. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>2</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup>The name of the Employer appears as amended at the hearing.

<sup>2</sup>The Employer and Petitioner have filed briefs which have been carefully considered.

2. The Employer is not engaged in commerce within the meaning of the Act and it will not effectuate the purposes of the Act to assert jurisdiction herein as discussed below.

3. The parties stipulated and I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Sections 2(6) and (7) of the Act.

### **I. The Issues**

The primary issue in this case is whether the Employer is exempt from the Board's jurisdiction as a political subdivision under Section 2(2) of the National Labor Relations Act (herein the Act) on the grounds that it is a component unit of the University of Puerto Rico (herein UPR), a state run university. A subsidiary issue is whether the Registered Nurses are supervisors under Section 2(11) of the Act. The Petitioner, contrary to the Employer, contends that the Employer is a private, not for profit, corporation and not an exempt public employer; and that the Registered Nurses are not supervisors under the Act.

For the reasons set forth below, I find that the Employer herein is an entity created directly by the Commonwealth of Puerto Rico and administered by individuals responsible to public officials, and as such exempt from the Board's jurisdiction under Section 2(2) of the Act as a political subdivision.<sup>3</sup>

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<sup>3</sup>In view of this finding, it is unnecessary to decide whether the Registered nurses are supervisors within the meaning of the Act.

## **II. Overview of the Employer's Operations**

The UPR was organized as an organ of higher education to the service of the people of Puerto Rico by the Legislature of Puerto Rico.<sup>4</sup> The UPR is a tax-exempt institution which “achieves a public purpose of the Commonwealth of Puerto Rico”.<sup>5</sup> UPR's budget is appropriated from revenues collected by the Government of Puerto Rico.<sup>6</sup>

The UPR is governed and administered by a Board of Trustees. The Board of Trustees is composed of 13 members; 10 members appointed by the Governor of Puerto Rico with the advice and consent of the Senate, a student member and two tenured members of the faculty.<sup>7</sup> The Board of Trustees appoints the UPR President. In turn, the UPR President appoints, in consultation with the Academic Senate or the equivalent bodies of the various institutional units, the Board of Trustees approves, the appointment of the chancellors of the institutional units of the UPR, including the Chancellor of the Medical Sciences Campus, of the Director of Finance of the UPR and of such other officials that require confirmation by the Board of Trustees.

The Medical Sciences Campus or “Recinto de Ciencias Médicas” is an institutional unit of the UPR. In 1997, the Legislature amended the law governing the UPR to authorize the Board of Trustees of the UPR to create subsidiary or affiliated corporations to render services to the university community and to the people of Puerto Rico including, but not limited to establish a non profit corporation to operate a hospital

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<sup>4</sup>Act 135 of May 7, 1942, as amended; Act 1 of January 20, 1966, 18 P.R. Laws Ann. Sect. 601.

<sup>5</sup>18 P.R. Ann. Sect. 612 (F).

<sup>6</sup>18 P.R. Ann. Sect. 221 and 221(a).

<sup>7</sup>The student and faculty members of the Board of Trustees are elected through a secret ballot among the students and faculty members that represent the student body and the faculty staff, respectively, on the University Board.

of the UPR attached to the Medical Sciences Campus, the main institution of medical education of the UPR. The Legislature stated that it was imperative for the UPR to have a University Hospital administered and operated by it, to serve as a teaching laboratory for the students of the Medical Sciences Campus and also to offer quality and outstanding services to the people of Puerto Rico.

Based on this legislative mandate, on December 4, 1997, the Board of Trustees of the UPR issued a Resolution directing the President of the UPR to file Articles of Incorporation to create a not for profit corporation to administer the University of Puerto Rico Hospital, which would be known as Servicios Médicos Universitarios, Inc. (herein SMU). Further, the Board of Trustees specifically provided in the Resolution that the Board of Directors of SMU would consist of the President of the University, the Chancellor of the Medical Sciences Campus, a member of the Board of Trustees of the UPR, and two (2) members nominated by the President of the UPR and confirmed by the Board of Trustees.<sup>8</sup> In February of 1998, Dr. Norman Maldonado, as President of the UPR, filed Articles of Incorporation at the Department of State of Puerto Rico, and was listed as SMU's resident agent.

On March 12, 1999, the UPR acquired from the Department of Health of the Commonwealth of Puerto Rico the building and land that houses the University of Puerto Rico Hospital. Shortly thereafter, on March 26, 1999, SMU Bylaws were approved by its Board of Directors.<sup>9</sup> SMU Bylaws establishes that the President of the

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<sup>8</sup>The Board of Directors of SMU is currently composed by the President of the UPR; the Chancellor of the Medical Sciences Campus, a member of the Board of Trustees of the UPR, the Finance Director for the UPR's Central Administration; and the Hematology Director at the Medical Science Campus.

<sup>9</sup>The Puerto Rico Government Development Bank provided the initial capital for the Hospital. This loan was guaranteed by the UPR. According to the evidence presented at the hearing, this loan is still outstanding.

UPR shall be the Chairman of the Board. The Board of Directors appoints the Executive Director and all other officers and agents of SMU and determines their compensation and benefits. In addition, the Board establishes all SMU policies. SMU administers this facility owned by the UPR, and does business as “Hospital de la Universidad de Puerto Rico”, or University of Puerto Rico Hospital (herein UPR Hospital).

Article VIII of the SMU Bylaws state that the Board of Trustees of the UPR must approve by a majority of the votes the dissolution of the corporation, and if so approved, can order the President to transfer all of the corporation’s assets to the UPR as authorized by Law No. 1 of January 20, 1996.

UPR Hospital offers acute medical care to the cities of Carolina, Trujillo Alto, Canóvanas, Rio Grande, Loíza, and, as secondary areas, to the cities of Luquillo, Fajardo and San Juan.<sup>10</sup> The Hospital has 250 authorized beds available for patients. These services are offered in order to have a foundation on which to provide educational clinical workshops for medical students of the Medical Sciences Campus. In addition, it provides educational workshops for UPR students in the disciplines of pharmacy, laboratory technicians, medical records, nursing, medical technologists, and CT technology. Nursing students and office clerks also have educational workshops at the Hospital and are either students of the UPR or of other private institutions such as the UNED, Universidad Metropolitana (UMET) and John Dewey College.

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<sup>10</sup>UPR Hospital has entered into payment agreements with certain commercial insurance carriers and health management organizations, such as Blue Cross, Triple S, Medicare, Cigna, ACA, Humana, First Medical, UTI medical plan, and the “Tarjeta de Salud del Gobierno de Puerto Rico”. The basis for payment under these agreements includes prospectively determined rates per discharge, discounts from established charges, and prospectively determined daily rates.

The medical faculty at the UPR Hospital is composed mainly (90%) of Doctors who are medical sciences professors at the Medical Sciences Campus. Since their role is academic in nature, they are not employees of the UPR Hospital. At present 5 to 10 doctors who are not professors of medicine at UPR are employed by SMU in a service role.

SMU has taken loans from the UPR which, according to the financial statements submitted into evidence, are still outstanding. The UPR Hospital has been able to operate notwithstanding its precarious financial situation with cash advances received from the UPR, the UPR's Medical Sciences Campus and the UPR's Plan de Práctica Médica Intramural<sup>11</sup> to cover its operational needs.<sup>12</sup>

### **III. Discussion:**

#### **A. Political Subdivision**

Section 2(2) of the Act excludes from the definition of employer under the Act "the United States or any wholly owned Government corporation of any Federal Reserve Bank, or any state or political subdivision thereof."

In order to determine whether entities are political subdivisions exempt from the Act, the Board uses a two-prong test established in NLRB v. Natural Gas Utility District of Hawkins County, 402 U.S. 600 (1971). Under that test, political subdivisions are entities that are either (1) created directly by the state, so as to constitute departments

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<sup>11</sup>These are programs established by the institutional units of the UPR. In conformity with UPR Board of Trustees regulations, these are developed to offer services under contract to persons and public or private institutions, utilizing educational personnel offering their services voluntarily and generating revenues for the institution and its participating personnel.

<sup>12</sup>According to its Financial Statements for fiscal year 2004, SMU owes the UPR's Central Administration, the Medical Science Campus and the "Plan de Práctica Médica Intramural" \$23,073,255. These loans are outstanding, and their balance due is unsecured, non-interest bearing and there is no specific time for repayment. During 2003 and 2004, the UPR made net cash advances to SMU of \$8,750,000 and \$4,830,000, respectively.

or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate. In Hawkins County, supra, the Supreme Court found that a gas utility district was within the second prong of the Board's test, as it was administered by individuals who were responsible to public officials, in large part because the commissioners administering the district were appointed by an elected county judge and also were subject to removal under the state's General Ouster Law.

The Board has held that significant governmental control over the employer's budget and audit procedures supports a finding that an Employer was created as an administrative arm of the state. See Hinds County Human Resource Agency, 331 NLRB 1404 (2000). Further, in The City Public Service Board of San Diego, 197 NLRB 312 (1972), in finding the employer to be exempt under the first prong, the Board found the Employer's autonomy in day to day operations and in labor relations were not controlling. The Board noted that the Employer was created by a city ordinance pursuant to a state statute, that its operations were financed initially by bonds issued with the approval of the city council, and that the sale of the Employer's property required the approval of the city council.<sup>13</sup>

In the instant case, the Legislature of the Commonwealth of Puerto Rico specifically authorized the Board of Trustees of the UPR to create subsidiary or affiliated corporations to offer services to the university community including establishing a not for profit corporation to operate a Hospital attached to the Medical Sciences Campus. This

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<sup>13</sup>St. Paul Ramsey Medical Center, 291 NLRB 755 (1988) is distinguishable in that the statute creating the public corporation and authorizing the organization of a hospital subsidiary corporation specifically stated these were not a "public employer" and that its employees were not "public employees" for purposes of the state public employment labor relations act. Further, there was no requirement that the board of directors be public officials or be appointed by public officials.

Hospital was designated to be the main teaching institution of the UPR. Following this mandate, the Board of Trustees of the UPR, through a Resolution, directed the President of the UPR to file Articles of Incorporation for an entity to be known as SMU. It is clear that the UPR is an agency or instrumentality of the Government of Puerto Rico<sup>14</sup>, and the Medical Sciences Campus and its teaching and workshop facilities are a part thereof. Since SMU was created by special legislative mandate to the Board of Trustees of the UPR, its formation is, therefore, attributable to governmental action. UPR Hospital files its contracts with the Puerto Rico Controller's office, as required of all other agencies and instrumentalities of Puerto Rico.<sup>15</sup> Significantly, the UPR President, and ultimately the Board of Trustees, is the one who control budgetary policies, and fund SMU's operations to the extent needed. While I note that SMU Board of Directors does have the power to hire and to determine its policies, programs and priorities, such responsibilities do not preclude a finding that SMU is an administrative arm of the Government of Puerto Rico. Hinds County Human Resource Agency, supra.

## **B. Responsible to Public Officials**

Under the second prong of Hawkins, an Employer will be exempt from the Board's jurisdiction if it is administered by individuals who are responsible to public officials or to the general electorate. In this regard, the Board has continued to find an Employer exempt from the Act's jurisdiction if a majority of an Employer's board of directors is composed of individuals responsible to public officials or to the general

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<sup>14</sup>The U.S. Court of Appeals for the First Circuit stated in Perez v. Rodriguez, 575 F.2d 21 (1<sup>st</sup> Cir.1978) that: The intent and nature of the Commonwealth of Puerto Rico's financial support for the UPR and the fact that the Commonwealth appoints the governing body of the University convinces us that the University is sufficiently an "arm" of the state.

<sup>15</sup>The Controller of Puerto Rico is appointed by the Governor to review all of the income, accounts and disbursements of the agencies and municipalities of Puerto Rico.



electorate. In University of Vermont, 297 NLRB 291 (1989), 12 out of 21 members of the Board of Trustees were selected by the State either by legislation or by gubernatorial appointment. The Board of Trustees operated in an autonomous manner, with independent authority to establish personnel policies, wages and benefits and to enter into collective bargaining agreements and to ratify such agreements without the approval of the legislature. Applying the test in Hawkins, the Board held in that case that if a mere majority of a board is elected or appointed by the state, the state exercises control over the organization, and thus the organization is a political subdivision.

Under the second prong of Hawkins, and Board law mentioned above, SMU d/b/a University of Puerto Rico Hospital or “Hospital de la Universidad de Puerto Rico” is exempt from the coverage of the Act because a majority of the members of its Board of Directors are either public officials and/or appointed directly by public officials. The President of the UPR, the member of the Board of Trustees and the Chancellor of the Medical Sciences Campus are public officials as the Trustee is a gubernatorial appointment and the positions of both UPR President and Chancellor of the Medical Sciences Campus are created by the legislation regulating the UPR.<sup>16</sup> While SMU’s Charter and Bylaws, and not a state statute, determines the composition of its Board of Directors, the fact that the corporation’s charter and bylaws establish the composition of the Board of Directors is not a limiting factor to finding an employer exempt from jurisdiction. Thus, In Oklahoma Zoological Trust, 325 NLRB 171 (1997), the Board

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<sup>16</sup>As noted above, in the case of the member of the Board of Trustees, the Governor with the consent of the Senate directly appointed him. In turn, the President of the UPR is appointed by the Board of Trustees. The Chancellor of the Medical Sciences Campus is appointed by the President of the UPR with the consent of the Board of Trustees of the UPR. In this regard, it is noted that in Truman Medical Center Incorporated, 239 NLRB 1067 (1978), the Board considered the provost of health sciences and the deans of the Schools of Medicine, Dentistry and Pharmacy to be public officials.

found the employer to be exempt under the second prong of the Hawkins test, notwithstanding the fact that the composition of the Board of Trustees and the appointment procedure were established through a Trust Agreement between the Employer and the city of Oklahoma to operate the city zoo from the city of Oklahoma, and not by a statute. See also Shelby County Health Care, 343 NLRB No. 48 (2004), where a lease agreement, and not a statute, provided the authority for the appointment of the board of directors, a majority of which were appointed, and subject to removal, by the county mayor with the approval of the county commission.

In this case, three of the five members of the Board of Directors of SMU are selected by the Board of Trustees of the UPR and hold their positions as Directors because of their public office, and the remaining two are public employees appointed by the UPR President. Thus, I find that the Commonwealth of Puerto Rico exercises control over the UPR Hospital's Board of Directors, and further, that the UPR Hospital is administered by individuals who are public officials and/or responsible to public officials.

Under these circumstances and based upon the totality of the record, I conclude that the Employer, Servicios Medicos Universitarios, Inc. d/b/a UPR Hospital is a political subdivision of the Commonwealth of Puerto Rico and not an employer within the meaning of the Act. I base my conclusion under both prongs of the Hawkins test, and find that Servicios Médicos Universitarios, Inc. was created by the Legislature of Puerto Rico so as to constitute a department or administrative arm of the UPR, and that it is administered by individuals who are public officials and/or responsible to public officials. Accordingly, I shall dismiss the instant petition.

**IV. Order**

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

**V. Right to Request Review**

Under the provisions of §102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. The Board in Washington must receive this request by April 13, 2005

Dated at San Juan, Puerto Rico, this 30<sup>th</sup> day of March, 2005.

/s/

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